STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 11, 2011

In the Matter of DAVIDSON, Minors.

No. 297597
Genesee Circuit Court
Family Division
LC No. 93-094045-NA

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

PER CURIAM.

Respondent L. Davidson appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), (j), and (m). We affirm.

A petitioner is required to establish a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's factual findings, as well as its ultimate decision whether a statutory ground for termination has been proven, for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Once a statutory ground for termination has been established, the trial court shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). The trial court's best interests decision is also reviewed for clear error. *Id.* A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich at 152. Deference is given to the trial court's ability to assess the credibility of the witnesses who appeared before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Although termination of parental rights need only be supported by a single statutory ground, *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991), the trial court in this case found that four separate statutory grounds for termination were established by clear and convincing evidence, namely, MCL 712A.19b(3)(c)(*i*), (g), (j), and (m). Section 19b(3)(m) alone supports the trial court's decision because it is undisputed that respondent's parental rights to two other children were previously voluntarily terminated after proceedings were initiated under MCL 712A.2. Respondent appears to concede this point and instead focuses her arguments on (1) petitioner's failure to offer reunification services through a parent-agency agreement, and (2) the children's best interests. We conclude that reunification services were not

required in this case and that the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

The Department of Human Services (DHS) is generally required to make reasonable efforts to rectify the conditions that caused a child's removal from the parent's home through the adoption of a case service plan. See MCL 712A.18f; see also MCL 712A.19(7) and MCL 712A.19b(5). *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Where reasonable efforts toward reunification are required, but the DHS fails to provide services necessary for the child's safe return to his or her home, termination of parental rights is improper. *In re Mason*, 486 Mich at 158-159.

In *In re Rood*, 483 Mich 73, 121-122 n 63; 763 NW2d 587 (2009), the Court explained that all parents, including noncustodial parents, must ordinarily be included in the development of a case service plan. The Court explained that

> [r]eunification efforts may be initially directed at a custodial parent when appropriate, consistent with the statutory preferences for a child's "own home." But if these efforts are unfruitful, the state must also make reasonable efforts to reunify the child with the noncustodial parent. Accordingly, unless the noncustodial parent is statutorily disqualified from becoming his child's custodian, the state must notify the noncustodial parent of his right to be evaluated as a potential placement and of his statutory right to receive services if appropriate. [*Id.* at 121-122 (footnote omitted).]

However, reasonable efforts toward reunification are not required in cases involving aggravated circumstances as set forth in MCL 712A.19a(2) and MCL 722.638. *In re Mason*, 486 Mich at 152. This is such a case. The record discloses that when the children were removed from their father's custody in April 2007, respondent was living in another state and had not seen the children for at least three years. Further, evidence was presented that there was a history of domestic violence between respondent and her longtime boyfriend, whom the children were terrified of because he had abused them in the past, and that the children were previously removed from respondent's custody in 2002 due to abuse and neglect. Moreover, respondent voluntarily released her parental rights to two other children in 2006 after proceedings were initiated under MCL 712.2 because of abuse and neglect. Under these circumstances, reasonable efforts to reunify respondent and the children were not required. See MCL 712A.19a(2)(a) and MCL 722.638(1)(b)(*ii*).

We agree with the trial court that this case is distinguishable from *In re Rood*. The trial court here did not terminate respondent's parental rights for failure to comply with the terms of a parent-agency agreement, but rather because, unlike the respondent in *In re Rood*, she had previously voluntarily released her parental rights to two other children after the initiation of similar proceedings. Further, as the trial court observed, although respondent had notice of these proceedings and was continuously represented by counsel since the children's initial removal from their father's custody in April 2007, she did not request placement of the children with her until December 2009, after the supplemental petition for termination was filed. Thus, she had ample opportunity to request that she be considered as a placement option for the children, but did not timely do so. Under the circumstances, the trial court did not err in finding that the

failure to offer respondent a case service plan did not preclude it from terminating her parental rights.

Lastly, we disagree with respondent's argument that termination of her parental rights was not in the children's best interests. Respondent principally relies on the fact that the children had expressed a desire to live with her. However, the evidence showed that the children were primarily interested in achieving permanency and not being separated from their siblings, and believed that respondent was the best option toward achieving those goals. But it was undisputed that the children had not had any real relationship with respondent for several years. Further, although the children had expressed their beliefs that respondent and her boyfriend had changed, it is clear that they had no realistic bases for those beliefs. Thus, the trial court did not clearly err in giving little weight, if any, to the children's qualified preferences. The children all had special needs because of their past traumatic experiences with respondent. Their situations had improved since their removal, but their continued growth and improvement was dependent upon them achieving permanency and stability, which respondent had never been able to provide in the past. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Deborah A. Servitto